Local Union No. 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* Koerts Glass and Paint Co. and Glass and Architectural Metal Workers Local 826, International Brotherhood of Painters and Allied Trades, AFL–CIO, Party in Interest. Case 7–CD–520

June 30, 1993

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed March 5, 1993, by the Employer, Koerts Glass and Paint Company, alleging that the Respondent, Local Union No. 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (Local 25) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Glass and Architectural Metal Workers Local 826, International Brotherhood of Painters and Allied Trades, AFL–CIO (Local 826). The hearing was held March 24, 1993, before Hearing Officer Marion E. Muma. Thereafter, Local 25 filed a brief.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Koerts Glass and Paint Company, a Michigan corporation whose principal place of business is in Flint, Michigan, is engaged in the fabrication and installation of glass and metal work products in the building and construction industry. During the 12-month period preceding the hearing, the Employer had gross revenue in excess of $1 million. During that same period the Employer purchased aluminum and glass products valued in excess of $50,000, which products were shipped directly to the Employer's various Michigan facilities from points located outside the State of Michigan. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Employer, Local 25, and Local 826 stipulate, and we find, that Local 25 and Local 826 are labor organizations within the meaning of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has had collective-bargaining agreements with both locals for many years, and has from time to time employed employees represented by both locals on various projects in the Flint area. The Employer maintains a regular and more or less permanent work force of employees represented by Local 826 (Local 826 personnel). The Employer employs employees represented by Local 25 (Local 25 personnel), on the other hand, only as needed, through referrals from that local.

The parties have stipulated that the work in dispute is:

> The laying out and installing of steel clips, and the installation of curtain wall framing, skylights, louvers, fixed aluminum windows and aluminum panels, which work has been assigned by Koerts Glass and Paint Company to employees who are members of, or represented by, [Local 25], rather than to employees who are members of, or represented by, [Local 826], which latter labor organization claims the aforedescribed work.

The notice of hearing in this case states that the dispute concerns the assignment of the above work at the addition and renovation project jobsites at McLaren Regional Medical Center (medical center) and Bishop International Airport (airport), both in Flint.

Essentially, the work in dispute involves putting the exterior walls on new buildings under construction. More specifically, the Employer determines the particular places on the building's skeletal structure (i.e., laying out) where it will weld or bolt (i.e., install) steel clips to the skeletal structure. Following laying out and installation of the steel clips, the Employer then affixes aluminum framing to the clips, horizontally and vertically, all around the structure (i.e., installing the curtain wall framing). Also at this stage, the Employer installs any fixed aluminum windows that are required (these are inoperative windows that do not open and close). Finally, the Employer installs the curtain wall itself, which is the glass or aluminum panels, and the air circulation louvers, all of which actually enclose the structure.[1]

[1] The Employer also performs glazing, which the Employer's vice president, Dennis Calvin, described as ''the method of installing glass or panels, et cetera, into the subframing that is going to retain it.'' However, the parties expressly agreed at the hearing that glazing is not part of the work in dispute and that the Employer's consistent assignment of glazing work almost exclusively to Local 826 personnel is not being challenged.

1. The medical center project

The Employer started working first on the medical center, in September 1991, using only Local 826 personnel. In May 1992,[2] Local 25 Business Representative Gregory Hicks and Business Agent Larry Hardin told Employer Vice President Dennis Calvin that the work in dispute at the medical center was within the contractual jurisdiction of Local 25, and should be assigned to Local 25 personnel. On July 2, Local 25 filed a grievance with the Great Lakes Fabricators & Erectors Association-Local 25 Joint Grievance Board (Joint Board), alleging that the Employer had violated its collective-bargaining agreement with Local 25.

On July 21, Local 826 Business Representative Richard Brim notified the Employer's attorney, Stanley Moore, in writing that he would not meet with the Employer or with Local 25 to discuss anything that might lead to a reassignment of work at the medical center from members of Local 826 to members of Local 25. Brim further stated that if Local 25 took any action that threatened Local 826's work assignment, Local 826 would ''take whatever action it deems necessary, including a work stoppage, to enforce its claim to this work.''

On July 29, the Joint Board issued its decision on Local 25's grievance against the Employer, finding that the Employer was in violation of its collective-bargaining agreement with Local 25, and ordering the Employer to comply with it.

On July 31, the Employer and Local 25 entered into a settlement agreement, under which the Employer agreed to assign the remaining erection of curtain wall, fixed windows, preglazed windows, preglazed louvers, and skylights on the medical center project between Local 25 personnel and Local 826 personnel, with Local 826 personnel not to be assigned more than 60 percent of the work.

Immediately following the July 31 settlement, the Employer began using what Calvin referred to at the instant hearing as ''a composite crew'' at the medical center, ''meaning that Local 826 and Local 25 personnel would work together on the different operations.'' In sum, according to Calvin, ''the metal portions of the job were done by Local 25 and the glass and glazing was done by Local 826.''[3]

On August 11, Local 826 Business Representative Brim wrote to Calvin that the Employer had ''improperly failed to apply the Local 826 agreement to all work coming under that agreement and to all of its employees performing such work'' at the medical center, and that Local 826 was filing a grievance against the Employer for an alleged violation of the recognition/jurisdiction article of the Employer's collective-bargaining agreement with Local 826.

2. The airport project

The Employer began working on the airport project in November. According to Calvin, the airport project developed like the medical center project, with Local 25 personnel handling the metal and Local 826 personnel handling the glazing and the glass; ''the Iron Workers are installing the aluminum panels and the Glaziers are installing the store front and the glass.'' Local 826 Business Representative Brim testified that he was not satisfied with this arrangement because ''it's all . . . our work, but anyway, Koerts, you know, decided to split it up.''

3. The alleged proscribed activity

On March 2, 1993, Local 25 notified the Employer in writing that Local 25 had recently learned that Local 826 had filed a grievance challenging the Employer's assignment of ''curtain wall erection on a composite basis between Glaziers Local 826 and Iron Workers Local 25'' at the medical center and airport projects and ''other future job sites where Koerts is involved in curtain wall erection.'' Local 25 expressed its understanding that Local 826 was dissatisfied with the Employer's ''composite assignment,'' and that Local 826 wanted the Employer's assignment of curtain wall erection to be made entirely to Local 826 personnel. Local 25 stated that it was ''satisfied with the current arrangement and accept[ed] the assignment on the current composite basis'' at the medical center and airport jobsites. Local 25 advised the Employer that it intended to do whatever was necessary for it to defend its claim for the work in question. It warned the Employer that if Local 826 continued to ''threaten'' Local 25's work assignment, then Local 25 ''will take whatever action it deems necessary, including a job shut down, to enforce its claim to this work.''

On March 5, 1993, the Employer filed the instant unfair labor practice charge, alleging that Local 25 had violated Section 8(b)(4)(D) of the Act.

B. *Work in Dispute*

The description of the work in dispute is set forth in full in the preceding section.

C. *Contentions of the Parties*

The Employer, in the closing statement of its attorney, asserted that it had made a decision that certain tasks could best be performed by Local 25 personnel and certain others by Local 826 personnel. The Employer stated that it was ''satisfied with'' the composite arrangement used on the medical center and airport projects, ''where the metal was handled by the Iron Workers and the glazing and glass was handled by the

[2] All subsequent dates are 1992, unless otherwise stated.

[3] According to Calvin, the medical center project was approximately 90 percent completed at the time of the instant March 1993 hearing.

Glaziers.''[4] The Employer contends that the work in dispute should be awarded to employees represented by Local 25 on the basis of the Employer's preference and practice, economy and efficiency of operations, and relative skills of the employees involved.[5]

In its brief, Local 25 asserts that the work in dispute should be assigned to employees it represents, on the basis of, inter alia, employer preference and practice, economy and efficiency of operations, and relative skills of the employees involved.

Local 826's business representative asserted at the hearing that the work in dispute on the two projects in question, and on all future projects on which the Employer performs such work, should be assigned entirely to employees it represents, on the basis of its collective-bargaining agreement with the Employer, the experience of Local 826 personnel, and area practice.[6]

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there is reasonable cause to believe that a union has threatened to use or has used proscribed means to force an employer to assign work to one group of employees rather than to another.

It is undisputed that Local 826 claims the metal work assigned to Local 25 personnel on the medical center and airport projects. In its March 2, 1993 letter to the Employer, Local 25 threatened that if Local 826 took any action that threatened Local 25's work assignment on the medical center and airport projects, then Local 25 would take whatever action it deemed necessary, including a job shutdown, to enforce its claim to that work. Based on the foregoing, we find reasonable cause to believe that Local 25 has violated Section 8(b)(4)(D) of the Act.

The parties have stipulated that no voluntary means to settle the dispute in question is possible and that all parties are not bound to the Impartial Jurisdictional Disputes Board. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that either of the Unions has been certified by the Board to represent the employees of the Employer.

a. *Contracts with Local 826*

The Employer has had collective-bargaining agreements with Local 826 since approximately 1968. Its current contract with Local 826 is for the period June 16, 1992 to June 15, 1993. Article 1 of this contract, entitled ''Recognition/Jurisdiction,'' states in pertinent part as follows:

> The Employer agrees that the Union shall have sole jurisdiction over the installation of the following kinds and types of work and/or materials on work accepted by the Employer in connection with the construction work of Local Union 826.
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> [A]ll types of aluminum, bronze, or stainless steel materials used for the facing and/or framing of buildings, store front construction, etc. . . . all curtain wall systems (regardless of height) . . . all types of preglazed window installation (wood or metal). . . . All skylight systems (fabricating and erection). . . . Also, the installation of any and all other work or materials recognized in the glass and metal industry as glass and metal work.
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> . . . .
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> It is further agreed that signatures [sic] to this glass and metal agreement shall assign work as outlined in this agreement to qualified glass and metal workers of Local 826.

b. *Contracts with Local 25*

According to Employer Vice President Calvin, the Employer has had contracts with Local 25 ''from every year from 1964.'' The ''Jurisdiction of Work'' section of the Employer's 1989–1992 collective-bargaining agreement with Local 25, to which the Employer acknowledges that it remains bound, states in pertinent part as follows:

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[4] This highlights the distinction between the Employer's broad *work on the projects* and the more narrow *work in dispute*. The Employer's work on the projects is, generally speaking, comprised of both (1) the work in dispute (performed almost exclusively by Local 25 personnel) and (2) glazing (not in dispute; performed almost exclusively by Local 826 personnel).

[5] The Employer also asks that the Board make a broad award, by determining that in future projects of this nature it will be the Employer's prerogative to assign composite or mixed crews to perform the work.

[6] Unlike the Employer and Local 25, Local 826 neither called any witnesses nor introduced any evidence at the hearing.

> The jurisdiction of [Local 25] covers for its members the following work: . . . erection and construction of all iron and steel, . . . aluminum . . . structures or parts thereof; . . . clips, brackets . . . skylights . . . facias . . . fronts . . . .

The July 31, 1992 settlement agreement between the Employer and Local 25 states in pertinent part that:

> Koerts will assign the remaining erection of curtain wall, fixed windows, preglazed windows and preglazed louvers, together with all associated tasks . . . between Iron Workers and Glaziers at the McLaren hospital project on a basis not to exceed 60% Glaziers on all work covered by exterior wall bid package.
>
> Koerts will assign the erection of skylights and all associated tasks, on the same basis[.]

Calvin testified that the settlement agreement covered basically the work described in the 1989–1992 contract with Local 25, ''but just the items that are involved on this project.'' At the time the Employer and Local 25 entered into the settlement agreement, it pertained only to the medical center project. It has, however, subsequently been applied to the airport project.

Because the Employer currently has collective-bargaining agreements with both Local 826 and Local 25 that each appear to cover the work in dispute, we find that this factor does not favor awarding the work in dispute to either Local 826 or Local 25 personnel.

2. Employer preference

The Employer prefers that Local 25 personnel be assigned the work in dispute. We find, therefore, that this factor favors awarding the work in dispute to Local 25 personnel.

3. Area and industry practice

Calvin testified that, as far as he knew, the Employer was the only local contractor in the Flint area to use ironworkers to perform work like that in dispute, while other local contractors use glaziers ''in a lot of cases.'' But Calvin then qualified his testimony by stating that the Employer is the only company of its type in the Flint area to perform such work on *large* projects (structures more than two stories high), where much if not most of the work in dispute must be performed on scaffolding, relatively high off the ground.[7]

Local 25 introduced into evidence a list of 11 construction projects completed in the Flint area in the past 10 years on which, according to the testimony of Local 25 Business Agent Larry Harden, Local 25 personnel performed work like that in dispute.

Calvin testified that in the Detroit area (about 80 miles southeast of Flint) ironworkers perform work like that in dispute ''most of the time.'' Consistent with Calvin, Hicks testified that the general practice of contractors in Local 25's geographical jurisdiction (essentially, the eastern half of Michigan's lower peninsula) is to assign work like that in dispute to Local 25 personnel.[8]

Calvin testified that on an industrywide basis, the practice of using ironworkers or glaziers to perform work like that in dispute differs by geographical area.

We find that while the factor of industry practice is inconclusive, the factor of area practice, especially as it pertains to large structures, such as those involved in the instant dispute,[9] favors awarding the work in dispute to Local 25 personnel.

4. Relative skills

Calvin testified that the first task for Local 25 personnel on the medical center project was to repair and redo some of the work in dispute—welding—that had initially been performed by Local 826 personnel, but which had failed inspection and had to be redone. Calvin subsequently testified that Local 25 personnel had superior welding skills to those of Local 826 personnel.[10]

There are no licenses required to perform any of the work in dispute, but welders must be certified, usually by independent testing laboratories, on a project-by-project basis. Certain individuals in both locals are certified welders. Neither trade uses tools that members of the other trade are not ''capable'' of using. Calvin testified that both trades—and both locals—are safety-minded. Local 25's apprenticeship and training standards provide for classroom and field training in the discrete tasks involved in performing the work in dispute.

Calvin testified that in assigning the work in dispute on the two projects in question to Local 25 personnel, the Employer attempted to capitalize on ''what we thought was the strengths of either Local 25 or their

[7] Local 25 Business Manager Gregory Hicks similarly testified that ''[t]here hasn't been that many high rises built in this area, most projects don't go over one or two stories in this locality and the ones that have we've had Iron Workers on.''

[8] Local 25 introduced copious documentary evidence in support of that proposition, in the form of letters submitted to Local 25 from area contractors, which list various Michigan projects on which, according to Hicks, work like that in dispute was assigned to ironworkers or (as expressed more specifically in some instances) Local 25. As stated above, Local 826 did not introduce any evidence.

[9] The McLaren Medical Center is 13 stories. The record does not specify the number of stories in the Bishop International Airport, but the totality of the record evidence supports at least an inference that, like the medical center, it is a large structure, more than two stories.

[10] Although Calvin acknowledged that both Unions cover the skills needed to perform the work in dispute in their respective apprentice training programs, he nevertheless testified that ''The Iron Workers have been welding steel from day one. The Glaziers have just started getting education and bringing it in to their apprentice program. [They] do not have a lot of experienced welders.''

abilities, where they excelled, which was in the welding operations and the steel clips, and where their expertise and more experience [was] in major large window wall, curtain wall types of assemblies . . . because of [the projects'] size, we went with the Iron Workers in both cases.'' Calvin elaborated, testifying that on large structure projects, the Employer needs to employ workers who can perform the work in dispute while working on scaffolds many stories high, and that Local 25 personnel have the most experience in working under such conditions.[11]

We find that this factor, especially as it pertains to experience in performing the work in dispute on large structures, favors awarding the work in dispute to Local 25 personnel.

5. Economy and efficiency of operations

The record does not indicate that the Employer's assignment of the work in dispute, on the large structures in question, to Local 25 personnel has resulted in any particular economies or efficiencies of operation that would be lost by an assignment of the work in dispute to Local 826 personnel.[12] Accordingly, we find that this factor does not favor awarding the work in dispute to either Local 25 or Local 826 personnel.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local Union No. 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO are entitled to perform the work in dispute on the McLaren Regional Medical Center and Bishop International Airport projects. We reach this conclusion relying on employer preference, area practice on large structures such as those involved in this dispute (i.e., more than two stories), and relative skills in performing the work in dispute on such large structures.

In making this determination, we are awarding the work in dispute to the Employer's employees represented by Local 25, not to that Union or its members.

Scope of the Award

The Employer has asked that the Board make a broad award, by determining that in future projects of this nature it will be the Employer's prerogative to assign composite or mixed crews. For the Board to issue a broad, areawide award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area and that similar disputes are likely to recur.[13] There must also be evidence which demonstrates that the charged party (here, Local 25) has a proclivity to engage in unlawful conduct to obtain work similar to the work in dispute.[14]

The record fails to establish the existence of such circumstances. Accordingly, the Employer's request for a broad award is denied, and our determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of the Employer represented by Local Union No. 25, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, are entitled to perform for the Employer the laying out and installing of steel clips, and the installation of curtain wall framing, skylights, louvers, fixed aluminum windows and aluminum panels at the McLaren Regional Medical Center and Bishop International Airport jobsites in Flint, Michigan.

[11] Local 25 Business Manager Hicks testified that ironworkers are particularly more experienced at working at heights because they generally put together the superstructure of a building, involving a lot of work with cranes.

[12] The relative skills and experience that Local 25 and Local 826 personnel respectively could apply to performing the work in dispute are, of course, a different analytical matter, and have been assessed in the preceding section.

[13] *Electrical Workers IBEW Local 211 (Sammons Communications)*, 287 NLRB 930, 933 (1987).

[14] Id.